



ARKANSAS JUDICIARY

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Rule 40. Trial Settings And Continuances.

(a) Settings. Cases shall be set for trial at the request of any party after the issues have been joined. The court may assign a trial date, on its own motion, even though neither party has requested a setting. Precedence shall be given to actions entitled thereto by any statute of this State.

(b) Continuances. The court may, upon motion and for good cause shown, continue any case previously set for trial.

(c) Suits in Which Party or Attorney is Member or Officer of Legislature.

(1) Any and all proceedings in suits pending in any of the courts of this State in which any attorney for either party to any suit is a member of the Senate or of the House of Representatives or is a Clerk of either branch of the General Assembly, or Lieutenant Governor, while presiding as president of the Senate, and any and all proceedings in suits pending in any of the courts of this State in which any member of the Legislature or Clerk of either branch of the General Assembly, or Lieutenant-Governor, while presiding as president of the Senate, is a party, shall be stayed for a time not to exceed fifteen (15) days preceding the convening of the General Assembly and not less than thirty (30) days after its adjournment.

(2) Any and all proceedings in suits pending in any of the courts in this State in which any attorney for either party to any suit is a member of the Legislative Council, or the Legislative Audit Committee, or any Joint Interim Committee of the General Assembly, shall be stayed, or reset if scheduled, if said proceeding has been scheduled on any day upon which the Legislative Council, Legislative Audit Committee, or any Joint Interim Committee is meeting, provided, however, that said attorney shall be a member of the Committee, or alternate member attending in place of a regular member, which is meeting, and provided, further, that said attorney shall request the continuance of the Court no less than three (3) days before said proceeding is to commence.

(3) The term "adjournment" as used in subsection (c) shall mean the adjournment without the establishment of a day certain for reconvening, or adjournment or recess to a date more than thirty (30) days in the future.

(4) The provisions of subsection (c) shall be applicable in the case of special or extraordinary sessions of the General Assembly as well as regular sessions.

Reporter's Notes to Rule 40: - 1. Rule 40 deviates substantially in its wording from FRCP 40, although the intent of the rule is essentially the same as the Federal Rule. Section (a) basically follows prior Arkansas law as promulgated in Rule 4(a) of the Uniform Rules for Circuit and Chancery Courts. Thus, the method of setting cases for trial in this State will remain unchanged.

2. Section (a) recognizes the practice of giving certain types of cases precedence in the setting of cases for trial. An example of an action which has precedence under Arkansas law is an election contest. Ark. Stat. Ann. 3-1002 (Repl. 1962).

3. FRCP 40 sets no guidelines for determining when a continuance should be granted. The federal courts have taken the position that the matter of granting or refusing to grant a continuance rests in the discretion of the trial court. *McSurely v. McClellan*, 426 F. 2d 664 (C.C.A. D.C., 1970); *Connell v. Steel Haulers, Inc.*, 455 F. 2d 688 (C.C.A. 8th, 1972). Prior Arkansas law made a continuance mandatory under superseded Ark. Stat. Ann. 27-1401 (Repl. 1962) when a party was represented by an attorney who was in the legislature and it was in session; otherwise, the matter of continuances rested within the discretion of the trial court. *Baltimore & Ohio Ry. Co. v. McGill Bros. Rice Mill*, 185 Ark. 108, 46 S.W.2d 651 (1932); *Wallace v. Hamilton*, 238 Ark. 406, 382 S.W.2d 363 (1964). Under this rule, a continuance is never mandatory as was previously the case involving a member of the legislature. To this extent, Rule 40 changes Arkansas law.

4. Rule 40 does not require that a motion for continuance be in writing. Neither does it require that notice be afforded to opposing counsel that a continuance is sought. The court can, in its discretion, require such notice and as a practical matter notice, either orally or in writing, should be given to opposing counsel in most instances.

Addition to Reporter's Notes, 1979 Amendment: - Section (c) of Rule 40 did not appear in the original version of the Rules of Civil Procedure adopted by the Supreme Court in December 1978 but was added less than two months later. See *In re Rules of Civil Procedure*, Rule 40, 265 Ark. 963 (1979). Thus, this provision was in place when the Rules went into effect on July 1, 1979, although the Reporter's Notes were not modified to reflect its addition. Section (c) is virtually identical to a superseded statute, Ark. Stat. Ann. 27-1401 (Repl. 1962), as amended by Act 333 of 1979 [now see 16-63-406].

History Text:

History. Amended February 5, 1979

Associated Court Rules:

Rules of Civil Procedure

Group Title:

VI. Trials

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